United Nations A/C.6/52/SR.11

General Assembly
Fifty-second session

Official Records

Distr.: General
4 November 1997

Original: English

Sixth Committee

Summary record of the 11th meeting
Held at Headquarters, New York, on Tuesday, 21 October 1997, at 3 p.m.

Chairman: Mr. Tomka ..... (Slovakia)

Contents

Agenda item 150: Establishment of an international criminal court

Organization of work

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of the publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

97-82180 (E)

The meeting was called to order at 3.10 p.m.

Agenda item 150: Establishment of an international criminal court (A/AC.249/1997/L.5 and L.8/Rev.1)

1. **Mr. Verweij** (Netherlands), speaking on behalf of the European Union, and the associate countries of Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia, and, in addition Iceland, said that the establishment of a permanent international judicial body with jurisdiction over individuals suspected of committing exceptionally serious crimes of international concern was a historically significant opportunity. The European Union was encouraged by the ever-growing number of countries supporting the establishment of an international criminal court, as they had made apparent during the general debate of the General Assembly at its current session. The spirit of cooperation between delegations during meetings of the Preparatory Committee on the Establishment of an International Criminal Court showed that they had the will to overcome difficulties and agree on a statute for the court.

2. He called on representatives to remember the victims of international crimes as they set about establishing an international criminal court.

3. The States members of the European Union had participated actively in past discussions on the subject in the Ad Hoc Committee on the Establishment of an International Criminal Court, the Preparatory Committee and the Sixth Committee; therefore, its views on the fundamental considerations were well known. Principal among them were that an international criminal court should be effective, stand the test of time and draw on the experience of the ad hoc tribunals for the former Yugoslavia and Rwanda.

4. The European Union had welcomed the decision by the General Assembly in its resolution 51/207 of 16 December 1996 to hold a diplomatic conference of plenipotentiaries in 1998 with a view to finalizing and adopting a convention on the establishment of an international criminal court; that decision had been justified by the progress already made at that time in the Preparatory Committee. The Union was grateful to the Government of Italy for offering to host the conference in Rome, a most suitable venue. Also, 1998 was a symbolic year in that it marked the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide. The States Members of the United Nations had a duty to work towards a successful outcome for the conference in the form of a comprehensive and universal convention.

5. Further progress had been made at subsequent sessions of the Preparatory Committee, particularly on the definition of crimes, general principles of criminal law, complementarity, and trigger mechanisms, and procedural matters. The European Union welcomed particularly the progress on the crucial questions of complementarity and the admissibility of cases, and hoped that further discussion would lead to a consensus on the crime of aggression and, as a procedural issue, the role of the pre-trial chamber. It was confident that the Preparatory Committee would finalize a widely acceptable consolidated draft text of a convention to put before the conference. In that process, certain non-governmental organizations which had made significant contributions should continue to play a meaningful role.

6. The European Union hoped that the largest possible number of States would attend the conference so as to promote universal support for the court; it urged States to join in contributing to the trust fund set up to enable the least developed countries to take part.

7. For the conference to succeed, its rules of procedure should be considered by the Preparatory Committee at its meetings in March and April 1998; to that end, guidance should be sought from the Secretariat in preparing a complete set of draft rules to recommend to the conference.

8. **Mr. Politi** (Italy) recalled that his country's Minister for Foreign Affairs had stated during the General Assembly's general debate that for over half a century the United Nations had been seeking to establish a permanent international criminal court, and that the establishment of such a court was a test of States Members' collective responsibility, made even more pressing by the terrible massacres that had characterized recent ethnic conflicts. The project was now at a critical juncture, and expectations in the international community and among the public were higher than ever. The Italian Government, which viewed the matter as one of primary importance, had therefore offered to host the diplomatic conference in Rome in 1998.

9. Despite the considerable progress made in the Preparatory Committee, a number of important issues remained unresolved. The complementarity of the court with respect to national jurisdictions remained controversial, while the rules of procedure of the court were sensitive in that they needed to reconcile differing systems of criminal procedure. The provisions on penalties might soon be agreed, so long as the death penalty was ruled out, as his Government believed it should be. The basis for proceeding

towards a successful completion of the preparatory process was solid, however.

10. Italy was grateful for the positive response to its offer to host the diplomatic conference. Arrangements and preparations had begun swiftly, in cooperation with the Secretariat; he expressed his Government's gratitude to the Food and Agriculture Organization of the United Nations (FAO), which had agreed to make available its premises, equipment, services and personnel, so guaranteeing that the conference could carry out its work successfully. In June 1997, at the invitation of his Government, a planning mission at FAO headquarters had been organized. His Government was preparing the necessary legislative and financial instruments, and discussions on a conference agreement between Italy and the United Nations were under way.

11. In view of the need to strike a balance between the number of outstanding issues to be resolved and a desire not to dilute the discussions over too long a time, and in the light of informal suggestions received from many delegations and also the Secretariat, his Government felt that an appropriate duration for the conference would be five weeks, from 15 June to 17 July 1998, and proposed that the resolution to be adopted by the Assembly should contain a decision to that effect. The resolution should also contain a request to the Preparatory Committee to transmit, after its final session, a draft consolidated text of a convention for an international criminal court. The resolution should provide also for the conference's rules of procedure to be elaborated. The Secretariat should be requested to prepare a text for submission to the Preparatory Committee for consideration, and to draw up recommendations to the conference for adoption.

12. Non-governmental organizations had made an outstanding contribution to the process of establishing an international criminal court, and they must continue to do so during the diplomatic conference. The arrangements for their participation in meetings of the Preparatory Committee and the practice resulting from the relevant resolutions of the Economic and Social Council as adopted during recent United Nations conferences would provide useful guidance in making the necessary provision.

13. Participation in the conference by the largest possible number of States was vital if the objective of establishing an independent and effective international criminal court that enjoyed universal support was to be met, and the General Assembly would surely take that into account in its deliberations on the resolution.

14. The twentieth century had been an era of economic achievements and sensational technological progress, but it had also been one of wars, ethnic conflicts, massacres and persistent violations of international humanitarian law. Present and future generations would be grateful for the establishment of a permanent international criminal court as it would be a landmark act of redemption, with the goal of ensuring that justice would prevail and that atrocities would not be tolerated.

15. **Mr. Jele** (South Africa), speaking on behalf of the 14 States members of the Southern African Development Community, said that the establishment of an international criminal court had been one of the most important items on the United Nations agenda for almost 50 years, but it had unfortunately been pushed into the background by the cold war. With the end of the cold war that was no longer the case, and real progress had been made over the previous four years.

16. The States members of the Community had consistently spoken in favour of establishing a court, in the Ad Hoc Committee and the Preparatory Committee, in the belief that it would not only punish perpetrators but deter others from committing the heinous crimes in question.

17. Consultative meetings of the Community had been held over the previous two years to improve understanding of the proposed court within member countries; at those meetings, the possible implications and benefits had been considered. Common positions on some articles of the draft statute had been adopted. In that connection, he noted that input had also been solicited from all those with a part to play, including academics and non-governmental organizations.

18. At the last such consultative meeting, held in Pretoria from 11 to 14 September 1997, ten basic principles on which there was consensus had been adopted. The Community considered the principles essential to the court's establishment and operation. They were that the court should be established without delay; it should be effective, independent and impartial and operate to the highest standards of international justice; it should be complementary to national criminal justice systems in cases where trial procedures might not be available or might be ineffective, and States should not attempt to shield accused persons from justice; it should be responsible and sensitive, and give special consideration to victims, especially women and children; it should be unfettered by the Security Council veto; its statute must guarantee the independence of the prosecutor, who should have the power to initiate investigations and prosecute ex officio; it must enjoy

maximum cooperation from all States, including where possible States that were not parties to the convention; it should have inherent jurisdiction over crimes of genocide, crimes against humanity and serious violations of the laws and principles applicable in armed conflict, and aggression should also be part of its jurisdiction, if consensus could be reached; an opt-in mechanism should apply in respect of treaty-based crimes; and human rights must be fully respected in all aspects of the court's statute, with emphasis on matters relating to the rights of the accused and the right to a fair trial.

19. The Preparatory Committee had already met for four of the nine weeks allocated to it under General Assembly resolution 51/207, and had done significant work on definitions of crimes, principles of international law, complementarity and trigger mechanisms; while much remained to be done, the Preparatory Committee would undoubtedly be able to fulfil its mandate by the time the diplomatic conference was scheduled to begin. Postponement of the conference was therefore unnecessary and would result in a loss of momentum. The Community wished to express its gratitude to the Government of Italy for offering to host the conference, and supported the proposal by the representative of Italy for a five-week conference in June and July 1998. While flexibility in debates was necessary, the debate at the conference should be structured to ensure optimal use of delegates' time.

20. Universal adherence to the statute of the court was imperative, and he therefore welcomed the trust fund set up pursuant to General Assembly resolution 51/207. However, more delegations might have attended meetings of the Preparatory Committee if cost-of-living expenses had been payable from the Fund, and he appealed to States to contribute generously to ensure that delegations from all Member States could attend the conference, particularly as it would be taking place away from Headquarters.

21. He warned that future generations would not look kindly on those involved if they missed the window of opportunity to bring an international criminal court into being before the turn of the century.

22. **Mr. Gorostiaga** (Paraguay), speaking on behalf of the States members of the Rio Group, expressed their firm support for the establishment of an international criminal court, a goal which had eluded the United Nations for over 50 years.

23. The establishment of a court raised a number of politically sensitive and legally complex issues. However, great efforts had been made to identify common ground, clarify concerns and draft alternative proposals and texts, and the members of the Rio Group were sure that the will existed to resolve the points at issue. The diplomatic conference of plenipotentiaries should show flexibility and commitment in examining the wide range of options available to it so that a court that was universal could be established without sacrificing its effectiveness in preventing and punishing serious international crimes. The greater the scope of the agreements reached within the Preparatory Committee, the better for the conference.

24. The court should be impartial and independent, complementary to national criminal justice systems but not subordinate to them or to any national or international political body. Whether the court succeeded or failed would depend in large measure on articulating appropriate relationships with States and with the United Nations so as to form bonds of cooperation that reinforced the operation of the court without prejudice to the respective areas of competence.

25. When procedural matters were discussed, account must be taken of the need to strike a balance between including in the statute the necessary substantive and procedural provisions for due process to be ensured and avoiding excessive detail. To rule out the possibility of impunity, the principle *aut dedere aut judicare* must be included.

26. Such organizational and operational matters as the length of the conference should be settled at the current session. Also, the rules of procedure for the conference must be available beforehand.

27. **Ms. Escarameia** (Portugal) identified three main pairs of conflicting imperatives that had underlain the process of establishing an international criminal court from the beginning, becoming more and more apparent as remarkable progress had been made.

28. The first conflict was between universality in the court's membership and the effectiveness of its powers. While universality was desirable, the court's powers must not be watered down to the point where it became a sham. That conflict could be seen in the issues of the definition of crimes and judicial cooperation with the court, but was strongest in the question of complementarity; the delegation of Canada was to be commended for its mediation during its chairmanship of the working group dealing with draft article 35 on admissibility (A/AC.249/1997/L.8/Rev.1, annex I), at the Preparatory Committee's August session. Portugal would prefer clearer primacy for the court over national systems, but could accept a compromise arrangement with the proviso that the court itself must have the final say as to its own competence. Under the 1949 Geneva Conventions and the 1948 Convention on the Prevention and Punishment

of the Crime of Genocide, already considered customary international law, most States were already obliged to try, and convict, individuals who had perpetrated almost any of the crimes over which the court would have jurisdiction. It would be a setback if the court were established without those powers.

29. The second conflict was between the level of detail of the rules to be laid down and the need for rapid progress to be made, and was particularly acute in relation to a number of rules of procedure, the definition of crimes and the prosecutor's investigatory powers. Precise principles were better than detailed rules as drafting them would not unnecessarily slow down the work of the Preparatory Committee and would not result in a rigidity that left the court unable to deal with situations as they arose. Any permanent institution had to have flexibility, and it was to be welcomed that those currently involved in international criminal judicial organs had said as much in their statements before the Preparatory Committee. An institutional mechanism for revising the statute such as the one Portugal had sponsored would be a way of resolving the conflict.

30. The third conflict lay between the role of States and the roles of such other entities as the Security Council and the prosecutor; in various forms, it could be seen in the debates on draft article 23, concerning the role of the Security Council, on draft article 25 *bis*, concerning the prosecutor's triggering power, (A/AC.249/1997/L.8/Rev.1, annex I) and on how victims or witnesses were to be treated in institutional terms. Her Government's position was that the court must, while preserving its independence, be open to any input that might help bring perpetrators to trial. It therefore viewed the prosecutor's ex officio powers to trigger an investigation on the basis of a complaint from any source as essential and favoured allowing the Security Council to submit situations to the court. And it would be contradictory for an international court set up to bring justice to the victims of extremely serious crimes to deny access by individuals.

31. The diplomatic conference should last between five and seven weeks and non-governmental organizations should be allowed to participate on the basis of rules of procedure agreed beforehand. Her delegation believed that the conference would succeed, particularly because everyone involved was mindful of the expectations of millions of people and knew that law was civilization's best instrument for dealing with abuses of power.

32. **Mr. Park Soo Gil** (Republic of Korea) said that his delegation was a staunch advocate of a permanent international criminal court, which would help the international community deprive flagrant offenders of international humanitarian law of the impunity they had enjoyed for far too long. The Preparatory Committee sessions had done a lot to narrow the gap on the technical issues and resolve differences over political issues, and the progress made on the principles of criminal law and procedural matters deserved the Sixth Committee's particular attention.

33. A simpler statute for the court, containing basic elements of procedure and fundamental principles of criminal law, was desirable and realistic. The court itself would be better placed to elaborate the details of those technical rules at a later stage, which would enable the Preparatory Committee to focus on other more important issues which were crucial for the early adoption of the statute.

34. His delegation welcomed the broad agreement on the definitions of genocide and crimes against humanity, as well as improvements in defining the crime of aggression, on the basis of the German proposal. The crime of aggression should be included as a crime punishable under the statute, and difficulties in defining that crime should be overcome with the aid of the experience gained since the Nuremberg and Tokyo trials. His delegation hoped that the differences over the definition of war crimes could be resolved at the Preparatory Committee's next session. The composite text on the trigger mechanism and the jurisdiction of the court should make it easier for delegates to reach a workable compromise on those matters. His delegation strongly supported endowing the court with inherent jurisdiction over four core crimes and supported placing it under the minimal influence of the Security Council. The fact that the most recent session had resulted *inter alia* in the adoption of a broadly agreed text on the difficult and complex issue of complementarity appeared to offer hope that other difficult issues could be resolved through broad consensus and compromise.

35. With regard to the subjects to be discussed at the Preparatory Committee's forthcoming session in December, securing a mechanism for international cooperation and additional assistance from States would be vital to ensuring the effectiveness of the court.

36. While his delegation was confident that 1998 would herald the establishment of the international criminal court, the resolute will of the international community was needed to remove any outstanding obstacles to achieving that objective. The fear that setting up the court would somehow diminish State sovereignty over criminal matters was not well-founded, since the statute would have numerous

mechanisms to protect State sovereignty. The benefits to be gained from the court enhancing the idea of peace through justice would far outweigh the risks involved.

37. The experience of the ad hoc tribunals in the former Yugoslavia and Rwanda underlined the importance of an effective, independent and permanent international criminal court, which would obviate the need for ad hoc tribunals in the future.

38. His delegation wished to express its appreciation to the Italian Government for its offer to host the diplomatic conference in 1998. It was also pleased to note that non-governmental organizations would be actively encouraged to participate, since their input would be invaluable for the outcome of that event.

39. **Ms. O'Donoghue** (Ireland) said that the rule of law was a fundamental principle of any international or domestic system of justice and that it was particularly important for protection of human rights. While Ireland had fully supported the establishment of the two ad hoc tribunals for the former Yugoslavia and Rwanda, that did not remove the need, indeed it reinforced the necessity, for a permanent international court. Ireland remained fully committed to the establishment of the court, through the elaboration of a convention, to respond in cases where individual criminal actions of a very serious nature had occurred and where such actions were not adequately dealt with by national jurisdictions.

40. With regard to the concept of complementarity, her delegation believed that the court should have the power to decide when a national system had failed or was unable to take adequate measures to prosecute a crime. Care should be taken not to impose an impossible burden on the court with regard to determining that a matter had not been, or would not be, dealt with adequately at the national level. Otherwise, there was a risk that individuals who should be subjected to the jurisdiction of the court would be protected by sympathetic national systems.

41. Her delegation was strongly in favour of the court having jurisdiction to consider exceptionally serious crimes, known as core crimes, and had great difficulty understanding how any State becoming a party to the Convention should be in a position to choose the core crimes for which individuals would be answerable to the court. In the absence of agreement about inclusion of certain "treaty crimes", there could be a mechanism to allow the international community to review and add to the list of crimes which would fall within the jurisdiction of the court from time to time.

42. As to the appropriate relationship between the court and the United Nations bodies, particularly the Security Council, her delegation believed that any future court should rely on the Security Council with regard to the determination of the existence of an act of aggression. Equally, the court should be able to adjudicate independently, on the basis of clearly defined legal principles and free of political influences, on the question of an individual's responsibility for an act of aggression.

43. The Preparatory Committee, the Working Group on Procedural Matters and the Secretariat had worked hard on many aspects of the draft convention, and her Government looked forward to further progress at the diplomatic conference. Her delegation fully supported the remarks by the Netherlands on behalf of the European Union welcoming the participation of non-governmental organizations and other groups in the conference. Lastly, it wished to reiterate its gratitude to Italy for undertaking to host the conference.

44. **Miss Ramoutar** (Trinidad and Tobago), speaking on behalf of the 14 States members of the Caribbean community (CARICOM), said that the work done so far on the drafting of an acceptable consolidated text of a convention on the establishment of an international criminal court had been very encouraging. Efforts should continue to reduce the number of proposals put forward on the subject (A/51/22, vol. II), in order to enhance the current process and ensure the fulfilment of the Preparatory Committee's mandate.

45. With regard to the recommendations of the Working Group on the Definition of Crimes (A/AC.249/1997/L.5, annex I) CARICOM could support the text of the definitions of the crime of genocide and crimes against humanity as the first draft for inclusion in the consolidated text, but believed that the Preparatory Committee should consider in greater detail the essential features of each act or crime.

46. CARICOM also supported the inclusion of war crimes within the jurisdiction of the court and noted that certain acts reflected in the draft text contained elements which it believed had attained the status of customary international law. There was a need, however, to ascertain which of the acts were sufficiently grievous to be classified as war crimes and thus be justiciable by the international criminal court.

47. The German delegation was to be complimented for its proposed definition of the crime of aggression. However, the responsibility of the Security Council in determining whether an act of aggression had been committed should in no way undermine the role of the court as a judicial body.

48. CARICOM member States continued to support the inclusion of other crimes, such as illicit traffic in narcotic

drugs, within the jurisdiction of the court and were willing to cooperate with other delegations in drafting appropriate definitions for those crimes. While CARICOM was broadly satisfied with the progress made by the Working Group on General Principles of Criminal Law and its examination of the proposals before the Preparatory Committee, it believed that the principles should bridge the differences between the major legal systems of the world, and approach that should be adopted by delegations when considering procedural matters relevant to the establishment of the court. That approach had been attempted during the August session of the Preparatory Committee, resulting in a welcome reduction in the number of options on each article. There should be further discussions of those texts.

49. Complementarity was at the heart of the jurisdictional relationship between the international criminal court and national courts and any text on that issue should stress that it was the primary duty of States to investigate and prosecute those accused of committing the crimes within the international court's jurisdiction. The courts should not be seen as an appellate body or one which would have exclusive jurisdiction. Therefore, while the draft text negotiated in the informal consultations could facilitate the work of the Preparatory Committee, the threshold for the exercise of the court's jurisdiction should not be so high as to impede the functioning of the court.

50. The other articles within the draft statute relating to the principle of complementarity should also be carefully examined to ensure, for example, that the court would have jurisdiction in cases where a sentence had been disproportionate to the severity of the offence committed and that no domestic jurisdiction could be used to shield the offenders in question.

51. CARICOM supported the proposal for the extension of the court's inherent jurisdiction to the core crimes, but could see no advantage in limiting that jurisdiction to genocide only, as proposed in the draft statute prepared by the International Law Commission (A/49/10, chap. II). Her delegation did not agree that inherent jurisdiction would amount to an encroachment on State sovereignty since it believed that inherent jurisdiction should not be seen as exclusive jurisdiction. The court would be seized of a case only when domestic procedures were unavailable or ineffective. With regard to the role of the prosecutor in initiating proceedings before the court, the procedures provided for in the Commission's draft statute must be supplemented by empowering the prosecutor to initiate proceedings ex officio, or on the basis of information obtained from various sources. Of necessity, such discretion would be subject to appropriate safeguards, which could be included in the draft statute.

52. As to the role of the Security Council and its relationship to the court, while CARICOM supported the role of the Council in referring situations or matters to the court, it did not believe it would be tenable to include the provisions proposed in article 21 *ter*, paragraph 2, of the text (A/AC.249/1997/L.8/Rev.1, annex I). The text should reflect the fact that the court was not a subsidiary body or subordinate to the Council, and should be independent and free from political interference.

53. With regard to the forthcoming session of the Preparatory Committee in December, CARICOM believed that any inter-sessional and formal meetings should be transparent and open to all States, in order to reduce options on the various articles and facilitate the compilation of a consolidated text. The General Assembly should ensure that all the necessary arrangements were made and the resources required were provided for the convening of the diplomatic conference in Rome in June and July 1998. CARICOM thanked the Government of Italy for undertaking to host the Conference. It believed that all outstanding legal and political issues should be resolved at the Conference, when the draft statute and procedural issues should be further discussed and all texts should be adopted and open for signature. The piecemeal adoption of certain provisions would not be feasible; her delegation hoped therefore that all participants would be willing to compromise for the good of the international community.

54. **Mr. Koffi** (Côte d'Ivoire) said that his delegation was fully committed to the establishment of a permanent international criminal court to deal with serious breaches of international human rights law. The special competence and provisional nature of tribunals for the former Yugoslavia and Rwanda had weakened their ability to deal with such breaches and strengthened the argument for the establishment of an international criminal court.

55. The largest number of States possible and all existing legal systems should be represented at the diplomatic conference, to ensure the universality of the court, which should be established on the basis of a multilateral convention. The competence of the court should cover four categories of crimes: genocide, crimes against humanity, war crimes and the crime of aggression. Inclusion of the principle of complementarity in the statute of the court was vital to ensuring the accession of the largest number of States possible. In keeping with the principle of State sovereignty, national courts should have full competence with respect to the crimes covered by the statute; however,

the international community must act in the place of national institutions that had deliberately failed to deal adequately with the crimes.

56. Concurrent jurisdiction for the court itself, the Security Council and individual States or States acting in concert should reduce the risk of inertia. Given the number of entities which would have the right to initiate proceedings, there should be a parallel right to exercise discretion, above all for the court. The court should have ultimate authority to decide on whether there was a case to be answered and whether to proceed or not. Lastly, the relationship between the court and the United Nations, which the conference should define in detail, should in no way adversely affect the independence and impartiality of the court.

57. **Mr. Kurien** (India) said that the statute of the International Criminal Court should clearly reflect certain fundamental principles of international law and the situation of international society in order to attract the widest possible support and membership. The following core principles were among those on which the court should be based: it should have jurisdiction only with respect to the most serious crimes of common international concern; that jurisdiction should be supplementary or complementary to the primary national jurisdiction of States in criminal justice matters; the court's jurisdiction should be optional in nature and be based on the principle of the consent of States; affected States, the State of nationality of the accused and the State where the accused was found should normally have the *locus standi* to initiate the jurisdiction of the court; all States should extend judicial and legal assistance as required; the court should enjoy a relationship with the United Nations that did not compromise its judicial independence; the accused should benefit from the safeguards of due process; and criminal procedures and methods to be followed by and before the court should be both efficient and commonly acceptable to all the principal legal systems.

58. International terrorism was the worst form of international crime, threatening the political and social fabric of States and the friendly relations between them, as well as the lives of innocent civilians. It knew no territorial boundaries and was indiscriminate. His delegation therefore strongly supported the proposal made by Algeria, contained in document A/AC.249/1997/WG.1/CRP.4, that the court should cover such crimes, which were of common concern to mankind.

59. His delegation supported the approach, adopted by the International Law Commission, whereby the court would have optional jurisdiction, based on the requirement of the consent of States. So-called inherent and compulsory jurisdiction for an international court would constitute a radical departure and would not achieve such wide acceptance. Indeed, not only should the consent of States be a precondition for the exercise of the court's jurisdiction but only concerned States should initiate its jurisdiction. The prosecutor should not have the competence to initiate investigations *motu proprio*. Nor should the Security Council have the competence either to take matters up before the court or to bar States from taking to the court matters in the field of the maintenance of international peace and security. Any such pre-eminence of the Security Council over the court would subordinate the court's judicial independence to the political considerations of the Security Council, as well as divesting States of their legitimate competence to initiate jurisdiction. Making the court's jurisdiction contingent on a determination by the Security Council in matters of international peace and security would reduce its status to an ad hoc tribunal every time; it would be neither permanent nor a court. The judicial process should be separated from the political process. To give sweeping discretionary powers to a prosecutor or to subordinate the court to the Security Council would defeat the very purpose of the court's establishment.

60. Furthermore, the focus of the preparatory process should be directed solely at substantial and procedural issues. A move to expand by stealth the substance of applicable international law or to reinterpret the relevant international conventions, including those relating to international humanitarian law, would not only go beyond the prescribed mandate of the establishment of an international criminal court but would also raise irrelevant controversies.

61. There were several outstanding issues of substance awaiting consideration, including the content of complementarity, the definition of crimes, the nature of jurisdiction, the role of the Security Council, the role of the prosecutor, the principles and procedures of criminal law, mutual legal assistance and judicial cooperation on, for example, extradition, and the nature of penalties. There were also sensitive and complex issues of an administrative, financial and structural nature, on which negotiations had yet to commence. A great sense of understanding and accommodation of different viewpoints would be needed. India took a constructive approach to the establishment of the court and would continue to cooperate in that spirit at forthcoming meetings.

62. **Mr. Erwa** (Sudan) said that the establishment of an international criminal court was a new stage in the struggle of humanity against war and oppression. His delegation had contributed to all the efforts directed at establishing the

court, beginning with participation in the work of the International Law Commission, to which his country's best specialists in international law had been elected.

63. The court's statute derived its substance from the rich resources of cultural diversity, which should lead to a unified effort and a unified result. For that reason his country had called for a statute made up of elements of various legal systems and not just of one or two. The statute also had to observe the principle of the progressive development of international law. Not only should it be totally impartial and independent, but efforts should be made to make it better than previous, similar instruments. In that context, his delegation supported the idea of establishing a prosecution chamber; the prosecutor should not be empowered to conduct investigations ex officio, since that ran the risk of politicization.

64. The relationship between the court and the Security Council should be the subject of in-depth examination through the exchange of ideas. The Security Council was a political body, while the court was to be a permanent, judicial body and should therefore not be subject to the jurisdiction of a political body. Article 23 of the draft statute should therefore be reconsidered to ensure that it included the general legal principles that were indispensable to any judicial body and that the draft statute was devoid of contradictions and inconsistency.

65. The penultimate preambular paragraph of the draft statute stated that the court should be complementary to national criminal justice systems. Not only was the established principle of national sovereignty thus confirmed, but the positive cooperation of Member States was also secured. The prominent role of national courts in punishing serious crimes was also acknowledged. The role of the court should be to exercise its jurisdiction when the concerned State no longer existed or when its judicial system became ineffective. Necessary safeguards should be established to ensure that complementarity was respected. The balance that the International Law Commission had tried to strike between the principle of complementarity and the inherent jurisdiction of the court would be best served by reviewing draft article 23.

66. Lastly, he expressed his appreciation to the non-governmental organizations for their useful contribution to the draft statute; his country believed that the rules governing participation by members of civil society in United Nations activities should be finally established. The International Institute of Higher Studies in Criminal Sciences had made a tremendous contribution, not least in financing participation by the least developed countries in the Preparatory Committee and in the conference to be held in Italy in 1998. Much remained to be done before that conference and he therefore urged the General Assembly to allow the Preparatory Committee to extend its two forthcoming sessions by about three days. That would be of particular help to Member States represented in the Preparatory Committee by only one delegate.

67. **Mrs. Dascalopoulou-Livada** (Greece) said that she wished to elaborate further on the statement made on behalf of the European Union. The situation regarding the establishment of an international criminal court was vastly improved as compared with the previous year. There had been a considerable narrowing of differences and the number of controversial points significantly reduced. The many points of divergence that remained could only be finally settled at the diplomat's conference. Meanwhile, her comments aimed to narrow differences still further.

68. Her delegation was largely satisfied with draft article 35, entitled "Issues of admissibility", as provisionally agreed on by the Preparatory Committee. The notions of the unwillingness or genuine inability of a State seemed to strike the right balance, given that the decision on such issues rested with the court. With regard to who was entitled to request the examination of the possible inadmissibility of a case, a wide spectrum of possibilities should be adopted.

69. In connection with draft article 21, her delegation was in favour of the prosecutor's being able to activate the trigger mechanism. Otherwise the court would remain an ineffectual construction, rarely resorted to by States; in other words, it would be subject to the unpredictability of political considerations. Also, along with the great majority of delegations, her delegation believed that retaining inherent jurisdiction for the court only in connection with genocide was no valid alternative to having inherent jurisdiction in respect of all the crimes listed. It was therefore strongly in favour of option 1 for draft article 22.

70. As to the thorniest of the articles, draft article 23, her delegation had tried to develop its position as far as possible to enable common ground to be found. Having originally maintained that paragraphs 2 and 3 of the draft article should be deleted, it had come to envisage the possibility of a determination by the Security Council on a question of aggression being taken into account by the court, provided that its independence was not affected and, most importantly, that if the Security Council had not determined within a prescribed time whether aggression had taken place the court might exercise its jurisdiction. A time limit was imperative, or else the court's jurisdiction would be deprived of any meaning in the most important cases.

71. The fact that the texts bearing on procedural matters contained fewer alternatives and brackets indicated that decisions were easier where political considerations were not so prominent, but also that the harmonization of elements of civil law and common law systems was not insuperable when there was a genuine will to go forward.

72. With regard to the definition of the crimes to be included in the jurisdiction of the court, her delegation was satisfied with the progress made in connection with the definition of genocide and crimes against humanity, although it favoured the inclusion in the latter of the crimes of enforced prostitution and enforced disappearance of persons. On the question of war crimes, further effort was required to reach a more comprehensive list. A great step forward had been made concerning the crime of aggression. There was widespread agreement that aggression had to be included in the jurisdiction of the court. The real question was how it should be defined; and there too there had been progress. Of the two options in the draft consolidated text the more comprehensive one was preferable, but she saw no insurmountable difficulties within reaching agreement on the matter. Lastly, the Working Group on General Principles of Criminal Law and Penalties had made headway on finding solutions to important questions in that regard.

73. **Mr. Bandora** (United Republic of Tanzania), after associating himself with the statement made on behalf of the Southern African Development Community, said that the progress made by the Preparatory Committee meant that the opportunity to create an international criminal court, providing fair and efficient justice, was within reach. Commendable progress had been made to protect and enforce human rights through the prosecution of those who committed serious violations of humanitarian law. A widely acceptable text could not be easily achieved if each country strove to hold to the specifics of its own legislation and practice. His country therefore shared the view that it was not practical to define all crimes or to include a code of general principles of criminal law procedure and evidence. The statute should simply name the crimes falling within the jurisdiction of the Court and include the most basic rules of procedure, evidence and substantive law. The court should be permitted to elaborate its own rules of procedure and evidence.

74. His delegation remained concerned that there continued to be efforts to exclude the crime of aggression from the jurisdiction of the court. The definitional difficulties being raised could surely be resolved. Failure to include it as a core crime would be a dramatic retreat from the established principles that aggression was the "supreme" international crime. In that context, his delegation believed that the court's powers should not be circumscribed by those of the Security Council and that it should be allowed to exercise direct jurisdiction over the core crimes. The inclusion of aggression as a core crime would therefore be a compromise between an acknowledgement of the role of the Security Council and the need to ascribe a functional and jurisdictional role to an independent court in determining the culpability of an individual.

75. With regard to the inherent jurisdiction of the court, his delegation remained opposed to a regime of State consent based on a "pick and choose" approach, which at best would be cumbersome and at worst cripple the court. It was self-evident that a functional relationship between States parties and the court should be established. That would not undermine the court's inherent powers. The court must be allowed to assume jurisdiction where a concerned State was unwilling or genuinely unable to carry out investigations or prosecution, although "unwilling" or "unable" should be further defined so as to ensure that the court would not usurp jurisdiction from a State that might be in difficulty but was willing in principle to proceed with a prosecution. If the court was to be independent and effective, however, it had to be permitted to determine the state of such "unwillingness" or "inability".

76. Another important aspect in the relations that the court must establish with States parties related to judicial assistance. The political will of States would be challenged there, too. His delegation therefore considered that the statute should be allowed to function both as a basis for judicial assistance and as an extradition treaty between and amongst States parties.

77. The role, authority, power and personal character of the prosecutor were critical to the court's ability to fulfil its mandate. His or her credibility would determine whether the Office of the Prosecutor was seen to be independent and impartial.

78. The court should safeguard the interests of the victims of horrific crimes. It was in the interests of justice that criminal responsibility should be extended to persons who knowingly aided or abetted the commission of an offence under the jurisdiction of the court by the supply of weapons or instruments used for committing such an offence. In the midst of the genocide in Rwanda and the former Yugoslavia some individuals and companies had taken advantage of the situation out of greed and supplied weapons. It would be a mockery of justice if criminal attribution to persons aiding and abetting genocide were not made.

79. The international community was nearer realizing the aspiration for an international criminal court than ever

before. It would be a tragedy if efforts in that direction faltered or if an institution so encumbered that it lost relevance or effectiveness were created. The opportunity remained to create a court sufficiently equipped to meet the new imperatives of human security.

80. **Mr. Mochochoko** (Lesotho) said that his remarks were intended to complement the statement made on behalf of the members of the Southern African Development Community, which his delegation fully endorsed.

81. While the idea of an international criminal court had been on the international agenda for centuries, the past few years had seen promising developments, arousing more enthusiasm for the process than ever before, as evidenced by the constant increase in the number of countries favouring the early establishment of such a court. That increase was encouraging, as was the growing public awareness of the need for perpetrators of heinous crimes to be brought to justice. All those factors would ensure quick ratification of the court's statute by States. The creation of an international criminal court could give the United Nations a new lease of life. Lesotho would continue to pursue the goal of establishing an objective and impartial body, advancing the principle of individual accountability under international law. His delegation urged other regional and subregional blocs to continue to seek common ground in advancing the process. It also expressed its appreciation to non-governmental organizations for their continuing role in contributing to the draft statute. All forces should be mobilized to meet the challenges that lay ahead, so that non-governmental organizations must be encouraged to continue their participation.

82. Lesotho had benefited from the special fund established pursuant to General Assembly resolution 51/207, for which it was grateful. It was regrettable, however, that the fund covered only travel costs. Subsistence costs surpassed the price of an economy ticket almost threefold: subsistence for one delegate for six weeks in Rome would cost about US$ 10,000. More assistance was therefore needed to enable participants from the least developed and developing countries to participate fully in the process.

83. **Mr. Omar** (Malaysia) said that it was regrettable that the only documents available on the item under consideration were the decisions taken by the Preparatory Committee at its sessions in February and August 1997.

84. It was imperative that the international criminal court should be an organ that was universally accepted by all the principal legal systems as well as all the major geographical regions of the world so as to ensure its effectiveness and authority. It was encouraging that delegations from all over the world had participated in the third and fourth sessions of the Preparatory Committee.

85. His delegation supported in principle the inclusion of three core crimes — genocide, war crimes, and crimes against humanity — within the jurisdiction of the court, provided that war crimes were confined to the most serious violations of the laws applicable in armed conflict, and crimes against humanity were precisely defined and did not include imprisonment, torture, institutionalized discrimination on racial, ethnic or religious grounds and the enforced disappearance of persons.

86. His delegation did not see the need to include "treaty crimes" such as terrorism and illicit traffic in narcotic drugs within the purview of the court; such offenses were more effectively and more appropriately tried by the national criminal justice system of the State in question and the inclusion of such crimes could overburden the court financially and in terms of its workload. Not all treaty crimes were of sufficient gravity to invoke the jurisdiction of the court, or were offenses recognized by general customary international law.

87. His delegation believed that the court should complement and not replace national courts, since States themselves had the primary duty under international law to investigate, prosecute and punish perpetrators of international crimes. National criminal justice systems were much better placed than the court to deal with crimes falling within the jurisdiction of both the court and national courts. There was also a risk of trivializing the important role of the court and overburdening the court, both financially and administratively.

88. His delegation had grave reservations about the concept of inherent jurisdiction of the court, which was inconsistent with the principle of State sovereignty, the complementarity principle, and considerations of reality and pragmatism. Such a concept might discourage Member States from becoming parties to the statute, and that would undermine the universality of the court.

89. His delegation did not favour any role for the Security Council in respect of the court since any intervention by the Council could undermine the independence of the court and the political role of the Security Council might hinder the effectiveness of the court.

90. His delegation proposed that the diplomatic conference should be held for not more than four weeks for reasons of limited resources. It was pleased that many developing countries had been able to participate in the work of the Preparatory Committee through the generosity of a few

developed States in contributing to the Trust Fund and hoped that such an effort would continue so that more members from developing countries could participate in future meetings.

91. **The Chairman** said that it was the general understanding that the Preparatory Committee would submit its report when it completed its work in early April; he hoped that the Secretariat would spare no effort to ensure that the report was ready well in advance of the diplomatic conference.

92. **Mr. Masuku** (Swaziland) said that his delegation fully endorsed the statement made by the representative of South Africa on behalf of the States Members of the Southern Africa Development Community.

93. His delegation supported the early establishment of the international criminal court; innocent peoples of the world were in imminent danger from the perpetrators of the core crimes. The issues that remained unresolved should not lead to a state of inaction and paralysis which might give the wrong impression to the international community.

94. **Mr. Soh** (Singapore) said that his delegation was very much encouraged by the progress made towards the establishment of an international criminal court and hoped that the spirit of cooperation and compromise would continue to prevail. It looked forward to active participation in the diplomatic conference by the largest possible number of States, especially from the developing world, so that the court would be a universally accepted institution.

95. **Mr. Duan Jielong** (China) said that his delegation recognized that the work of the Preparatory Committee was progressing at a slow pace; major differences still existed among States, making it difficult to produce a consolidated text that was widely acceptable. His delegation hoped that, given the limited time available before the diplomatic conference, the drafting exercise would be conducted with greater efficiency within the mandate given by the General Assembly, in accordance with the purposes and principles of the Charter of the United Nations and on the basis of the principles of complementarity and universality, and that all States would, in a spirit of cooperation and realism, make the greatest possible efforts so as to conclude the work.

96. His delegation felt that the definition of crimes should be made on the basis and within the scope of concepts that had been accepted by the majority of States and had become integrated into customary international law. It was in favour of including the core crimes of genocide, war crimes and crimes against humanity, as well as the crime of aggression if the international community was able to define it in legal terms. As to other treaty crimes, his delegation felt that in order to ensure the effectiveness and authority of the court, the range of crimes that fell under its jurisdiction should not be too wide, and that the court should not assume the responsibility of sovereign States under relevant international treaties. Only those crimes that constituted a common concern of the international community and were universally considered to be the most serious should be placed under the court's jurisdiction.

97. The inherent jurisdiction of the court, when extended to cover all core crimes, would accord precedence to the court over national courts; that was clearly at variance with the principle of complementarity and could adversely affect the cooperation between States and the court and the effective functioning of the court. As to the role of the Security Council, his delegation felt that the draft provisions prepared by the International Law Commission were quite balanced and that the importance of maintaining the independence of the court should be taken into full account. It would therefore support any proposal that would ensure the independence of the court and at the same time reasonably reflect the special role of the Security Council in the maintenance of international peace and security. With regard to admitting cases under article 35 of the draft consolidated text, his delegation believed that the current text reflected the principle of complementarity in a satisfactory manner.

98. The general principles of criminal law and procedures related to the fair administration of justice and the protection of the rights of the defendant and involved a large number of specific legal questions of a technical nature. When dealing with those issues, States should seek common ground and should refrain from overemphasizing relevant provisions of national laws on specific issues and try to find solutions acceptable to all countries in a spirit of cooperation and compromise without prejudice to principles.

99. **Mr. Grexa** (Slovakia) said that his delegation fully supported the position put forward by the representative of the Netherlands on behalf of the European Union and associate countries.

100. In the consideration of the question of the international criminal court, political and legal aspects were closely intertwined. While criminal justice, whether national or international, must be depoliticized, the establishment of an international criminal court was eminently political. Slovakia's policy with regard to crimes endangering the international community was that it was necessary to proceed with the highest sense of responsibility, as effectively as possible, and in strict accordance with law,

and to cooperate closely with other countries and international organizations. Slovakia had supported the establishment of the court from the outset and believed that the court would not fulfil its purpose unless it was universal. To that end, the statute must be accepted by the largest possible number of States belonging to different legal systems and with different political interests. The remaining problems must be resolved through a search for common denominators, compatible with the overall philosophy of the draft text. While the search for consensus solutions could be problematic, for example with regard to the death penalty, his delegation believed that the different legal systems had sufficiently wide interfaces in criminal law for it to be possible to find solutions, and that if the political obstacles could be overcome, the legal problems would also be resolved. It was desirable for States not only to ratify the text, but also to identify with the philosophy of the statute; the principle of complementarity would help in achieving that goal.

101. The ad hoc tribunals for the former Yugoslavia and Rwanda had been set up after the fact to deal with specific crimes committed in a particular place and at a particular time. Even so, a number of problems had arisen, and in the case of a permanent, universal criminal court, there were likely to be far more complex problems. It was important for the court to be established prior to the commission of crimes so as to enhance cooperation among States in the area of criminal law, help unify criminal law at the international level and strengthen the element of deterrence of potential criminals.

102. The court could not be a prisoner of its budget. It must be streamlined and its operation must be economical, and those characteristics must be established in the statute, in the provisions regarding the number of judges and the court apparatus and in those regarding jurisdiction and rules of procedure. Since the court would be complementary to national jurisdictions, it should not have more than the essential caseload. It was desirable for as many States as possible to accede to the Convention so as to avoid financial problems.

Organization of work

103. **The Chairman** said that on the question of the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions, there was a suggestion to establish an informal working group in order to discuss the draft resolution on the subject.

104. **Ms. Willson** (United States of America) suggested that since the Committee would be conducting informal consultations on the draft resolution under agenda item 150, it should also conduct informal consultations on the draft resolution concerning the implementation of the provisions of the Charter related to assistance to third States affected by the application of sanctions, under agenda item 151.

105. **Mr. Rao** (India) said that the Committee must continue the practice of previous years of having a working group on the question of Article 50 of the Charter. It would be a pity to depart from that practice, particularly since over 50 States had addressed the question in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. Any doubts could have been raised at that time; it was in the common interest to move forward.

106. **Mr. Grainger** (United Kingdom) recalled that the Special Committee had invited the General Assembly to consider the question of an appropriate organizational framework for addressing the question. His delegation was one of those which had not been convinced of the need for a working group. He sought clarification as to whether the remit of the working group would simply be to consider the draft resolution circulated informally by some delegations.

107. **Mr. Karev** (Russian Federation) said that the delegations of Bulgaria and Ukraine and his own delegation had prepared a draft resolution and given it to the Secretariat for circulation. He was not aware of any other document which had been submitted.

108. **Ms. Baykal** (Turkey) said that her delegation was one of those which had supported the establishment of the working group; it believed that the working group should not be limited to consideration of the draft resolution.

109. **The Chairman** said that it was his understanding that a number of delegations wanted the working group to be reconvened and also that the working group should concentrate on the draft resolution as the only document which had been formally submitted. He took it that that proposal was acceptable.

110. *It was so decided.*

The meeting rose at 6.20 p.m.